



# House of Representatives

General Assembly

**File No. 431**

February Session, 2018

House Bill No. 5267

*House of Representatives, April 12, 2018*

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT CONCERNING THE STATE CONTRACTING STANDARDS BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (21) of section 4e-1 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2018*):

4 (21) "Privatization contract" means (A) an agreement or series of  
5 agreements between a state contracting agency and a person or entity  
6 in which such person or entity agrees to provide services that are  
7 substantially similar to and in lieu of services provided, in whole or in  
8 part, by state employees, other than contracts with a nonprofit agency,  
9 which are in effect as of January 1, 2009, and which through a renewal,  
10 modification, extension or rebidding of contracts continue to be  
11 provided by a nonprofit agency; or (B) a procurement contract entered  
12 into on or after July 1, 2018, for which subsequent related services, the  
13 total cost of which exceed fifty thousand dollars per year, will be

14 required;

15       Sec. 2. Subdivision (28) of section 4e-1 of the general statutes is  
16 repealed and the following is substituted in lieu thereof (*Effective July*  
17 *1, 2018*):

18       (28) "State contracting agency" means any executive branch agency,  
19 board, commission, department, office, institution or council. "State  
20 contracting agency" does not include the judicial branch, the legislative  
21 branch, the offices of the Secretary of the State, the State Comptroller,  
22 the Attorney General, the State Treasurer, with respect to their  
23 constitutional functions, any state agency with respect to contracts  
24 specific to the constitutional and statutory functions of the office of the  
25 State Treasurer. For the purposes of section 4e-16, as amended by this  
26 act, "state contracting agency" includes any constituent unit of the state  
27 system of higher education and, [for] notwithstanding any provision of  
28 the general statutes, any quasi-public agency created to provide  
29 financing for any such constituent unit and any quasi-public agency  
30 not specifically excluded under this chapter. For the purposes of  
31 section 4e-19, "state contracting agency" includes the State Education  
32 Resource Center, established under section 10-4q;

33       Sec. 3. Subsection (m) of section 4e-2 of the general statutes is  
34 repealed and the following is substituted in lieu thereof (*Effective July*  
35 *1, 2018*):

36       (m) [Eight] The lesser of eight members of the board, or a majority  
37 of the appointed members of the board, including, [not less than] in  
38 either case, at least one member appointed by a legislative leader, shall  
39 constitute a quorum which shall be required for the transaction of  
40 business by the board.

41       Sec. 4. Subsection (c) of section 4e-13 of the general statutes is  
42 repealed and the following is substituted in lieu thereof (*Effective July*  
43 *1, 2018*):

44       (c) All state agencies in the executive branch, the constituent units of

45 the state system of higher education and quasi-public agencies shall  
46 post all bids, requests for proposals and all resulting contracts and  
47 agreements on the State Contracting Portal and shall, with the  
48 assistance of the Department of Administrative Services as needed,  
49 develop the infrastructure and capability to electronically  
50 communicate with the State Contracting Portal. No privatization  
51 contract shall be valid unless, at least thirty days prior to the execution  
52 of such contract, all certifications required by section 4e-16, as  
53 amended by this act, have been posted on the State Contracting Portal.

54 Sec. 5. Subsection (p) of section 4e-16 of the general statutes is  
55 repealed and the following is substituted in lieu thereof (*Effective July*  
56 *1, 2018*):

57 (p) Prior to entering into or renewing any privatization contract that  
58 is not subject to the provisions of subsection (a) of this section, the state  
59 contracting agency shall evaluate such contract to determine if  
60 entering into or renewing such contract is the most cost-effective  
61 method of delivering the service, by determining the costs, as defined  
62 in subsection (b) of this section, of such service. If the privatization  
63 contract is for a total amount of more than one million dollars, the state  
64 contracting agency shall also develop a business case for such  
65 privatization contract in accordance with the provisions of subsection  
66 (d) of this section. The state contracting agency shall perform such  
67 evaluation of cost-effectiveness in accordance with a template  
68 prescribed by the Secretary of the Office of Policy and Management  
69 and such evaluation shall be subject to verification by the secretary.  
70 Such template shall require a certification by the state contracting  
71 agency that it has complied with all requirements of this subsection  
72 and an explanation for the basis of such agency's determination that  
73 the provisions of subsection (a) of this section do not apply. If such  
74 evaluation of cost-effectiveness includes a determination by the state  
75 contracting agency that there are no savings to the state if the contract  
76 is performed by the contractor, such agency shall not enter into such  
77 contract without (1) providing a written report to the secretary  
78 concerning the reason such agency seeks to enter into such contract

79 despite a lack of savings, and (2) receiving written authorization from  
80 the secretary to enter into such contract. If such contract is not a  
81 renewal, the state contracting agency shall also consider and report, in  
82 writing, to the secretary on whether the quality of services could be  
83 diminished by the privatization contract and any risks associated with  
84 the termination or rescission of such contract. The secretary may waive  
85 the requirement for an evaluation of cost-effectiveness under this  
86 subsection upon a written finding by the secretary that exigent or  
87 emergent circumstances necessitate such waiver.

88 Sec. 6. Section 4e-16 of the general statutes is amended by adding  
89 subsections (r) to (t), inclusive, as follows (*Effective July 1, 2018*):

90 (NEW) (r) A state contracting agency that seeks to enter into or  
91 renew a privatization contract shall, not less than sixty days before  
92 entering into or renewing such contract, provide written notice to any  
93 collective bargaining agent that represents state employees performing  
94 work of the type and nature required by the privatization contract.  
95 Such notice shall include the information required under subsections  
96 (a) to (d), inclusive, of this section, or subsection (p) of this section, as  
97 applicable, and shall offer the collective bargaining agent the  
98 opportunity to meet with the agency to discuss such information and  
99 discuss whether the work could more appropriately be performed by  
100 state employees, prior to the contract being entered into or renewed by  
101 the agency.

102 (NEW) (s) Any state contracting agency that seeks approval of a  
103 contract that could be done at a lesser cost by state employees but  
104 determines there is an insufficient number of state employees within  
105 such agency to perform the contract shall, not later than sixty days  
106 after making such determination, submit a plan to the Secretary of the  
107 Office of Policy and Management for preventing a recurrence of such  
108 insufficiency by requesting authorization for the hiring of additional  
109 state employees. The secretary shall, upon the submission of any  
110 proposed budget or budget adjustment by the Governor, report to the  
111 joint standing committees of the General Assembly having cognizance

112 of matters relating to appropriations and the budgets of state agencies  
113 and government administration, in accordance with the provisions of  
114 section 11-4a, on whether and to what extent such agency plans are  
115 included in such submission and the basis for determining whether  
116 and to what extent to include such plans in the budget or budget  
117 adjustment.

118 (NEW) (t) No state contracting agency may enter into a  
119 privatization contract without obtaining the formal approval of the  
120 contract from the Attorney General. Prior to entering into any such  
121 contract, the agency shall submit to the Attorney General (1) a copy of  
122 the proposed contract, (2) any certifications required by this section  
123 attached to the contract, and (3) either a certification that the contract is  
124 not subject to the provisions of subsection (a) of this section, a  
125 certification that the contract was approved by the State Contracting  
126 Standards Board or a copy of the written exemption from the  
127 requirements of subsection (a) of this section signed by the Governor  
128 pursuant to subsection (o) of this section. Any privatization contract  
129 entered into on or after July 1, 2018, shall not be binding upon the state  
130 unless such privatization contract conforms with the requirements of  
131 this subsection.

132 Sec. 7. Section 4e-47 of the general statutes is repealed and the  
133 following is substituted in lieu thereof (*Effective July 1, 2018*):

134 On or [after January 1, 2011,] before January 1, 2019, each  
135 constituent unit of the state system of higher education shall propose  
136 regulations to the State Contracting Standards Board to be adopted by  
137 the board. The board shall adopt such regulations, in accordance with  
138 the provisions of chapter 54, [to apply the contracting procedures, as  
139 described in sections 4e-18 to 4e-45, inclusive, to each constituent unit  
140 of the state system of higher education] with any modifications to the  
141 proposed regulations the board deems appropriate. Such regulations  
142 shall take into consideration circumstances and factors that are unique  
143 to such constituent units. Until such regulations are adopted by the  
144 State Contracting Standards Board, the provisions of sections 4e-18 to

145 4e-46, inclusive, shall apply to every expenditure of public funds by  
146 any constituent unit of the state system of higher education,  
147 irrespective of the source of such funds.

148 Sec. 8. (NEW) (*Effective July 1, 2018*) (a) Not later than ninety days  
149 after the adjournment sine die of each regular session of the General  
150 Assembly, the Auditors of Public Accounts shall recommend to the  
151 Secretary of the Office of Policy and Management the appropriate  
152 staffing levels at the State Contracting Standards Board sufficient for  
153 the board to carry out its statutory duties. In any year during which  
154 the board is staffed at substantially lower levels than recommended by  
155 the auditors, the auditors may issue the compliance report for each  
156 state contracting agency as required under section 4e-6 of the general  
157 statutes. If such a compliance report has not been issued for an agency  
158 for three years or more as of December thirty-first of any calendar year,  
159 the auditors shall issue such report not later than April first of the  
160 following calendar year.

161 (b) To the extent the State Contracting Standards Board remains  
162 below the staffing level recommended by the auditors, each state  
163 contracting agency shall designate an employee to serve as a liaison  
164 with the State Contracting Standards Board. Such liaison shall notify  
165 the board of any privatization contract valued at over fifty thousand  
166 dollars and shall provide the board any evaluation or analysis of such  
167 contract not later than ten days after the agency completes such  
168 evaluation or analysis. An electronic communication to the board that  
169 directs the staff of the board to a posting on the State Contracting  
170 Portal shall constitute sufficient notice under this subsection. Each  
171 state contracting agency shall inform its liaison that any such reporting  
172 is an essential part of such employee's duties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2018</i>	4e-1(21)
Sec. 2	<i>July 1, 2018</i>	4e-1(28)
Sec. 3	<i>July 1, 2018</i>	4e-2(m)

Sec. 4	<i>July 1, 2018</i>	4e-13(c)
Sec. 5	<i>July 1, 2018</i>	4e-16(p)
Sec. 6	<i>July 1, 2018</i>	4e-16
Sec. 7	<i>July 1, 2018</i>	4e-47
Sec. 8	<i>July 1, 2018</i>	New section

**GAE**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 19 \$</b>	<b>FY 20 \$</b>
Higher Education Constituent Units	Various - Cost	1,761,654	1,822,675
Dept. of Administrative Services	GF - Cost	435,000	455,000
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	158,000	165,000
Various State Agencies	GF - Potential Cost	Significant	Significant

Note: Various=Various; GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

The bill expands the requirements for privatizing state services for contracting agencies, including the Department of Administrative Services (DAS), and expands the requirement to conduct a detailed cost-benefit analysis to include any privatizing procurement contract proposal over \$50,000 annually.

The bill results in a cost to the higher education constituent units of \$1,761,654 in FY 19 and \$1,822,675 for 17 positions. Funding these positions requires: (1) salary costs of \$1,301,259 in FY 19 and \$1,336,958 in FY 20, and (2) fringe benefits costs of \$460,395 in FY 19 and \$485,717 in FY 20. Funding may come from state General Funds and the Office of the State Comptroller, or from the constituent units' own funds (e.g.,

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.



operating funds from tuition revenue). These positions would be responsible for the research, analysis, and documentation required for cost effectiveness evaluations and cost benefit analyses through marketplace research, service industry segment benchmarks, and Requests for Information prior to the constituent unit's issuance of any bid solicitations.

Additionally, these positions would review and analyze bid responses to perform the cost effectiveness evaluations and cost benefit analyses using the prescribed templates; develop detailed business cases to support the constituent unit's decision to contract with an outside vendor rather than hiring additional employees to perform the services; and present all of the required information and documentation to the State Contracting Standards Board or other appropriate agency for approval.

It is estimated that DAS will have to perform a cost benefit analysis on over 150 contracts per year. To accommodate the requirements outlined in the bill, DAS would need \$435,000 in FY 19 and \$455,000 in FY 20 for six positions plus associated fringe benefits of \$158,000 and \$165,000 respectively.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****HB 5267****AN ACT CONCERNING THE STATE CONTRACTING STANDARDS BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.****SUMMARY**

This bill expands the requirements for privatizing state services, including the (1) contracts and agencies subject to the state's privatization law and (2) steps agencies must take to comply with the law. It does the following, among other things:

1. expands the definition of "privatization contract" to include procurement contracts that will require subsequent related services of more than \$50,000 per year;
2. subjects quasi-public agencies to the state's privatization law;
3. requires that, for privatization contracts for currently privatized services, the state or quasi-public agency provide a business case for the privatization if the contract is for more than \$1 million, in addition to the cost-effectiveness evaluation required by existing law;
4. requires state and quasi-public agencies that enter into privatization contracts due to insufficient staffing levels to submit plans for hiring more state employees;
5. prohibits (a) state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval and (b) privatization contracts from being valid unless certain certifications are posted on the State Contracting Portal at least 30 days before the contract's execution;

6. expands the State Contracting Standards Board's (SCSB's) authority over the constituent units of higher education; and
7. requires the auditors of public accounts and state contracting agencies to assume certain duties if SCSB is determined to be understaffed.

The bill changes SCSB's quorum requirements from eight members to a majority of the members actually appointed. As under existing law, at least one legislative appointee must be present. The board's full membership is 14 members: eight appointed by the governor and six appointed by legislative leaders (§ 3).

Lastly, the bill makes technical changes.

EFFECTIVE DATE: July 1, 2018

## **§§ 1 & 2 — APPLICABILITY OF PRIVATIZATION LAW**

### ***Definition of Privatization Contract (§ 1)***

The bill expands the definition of privatization contract to include any procurement contract entered into on and after July 1, 2018 that will require subsequent related services of more than \$50,000 per year. Under existing law, a privatization contract is an agreement or series of agreements between a state contracting agency and a person or entity that agrees to provide services that are substantially similar to and in place of services provided, in whole or in part, by state employees. It does not include contracts with a nonprofit agency that were in effect as of January 1, 2009, and that, through a renewal, modification, extension, or rebidding of contracts, continue to be provided by a nonprofit agency.

### ***State Contracting Agency (§ 2)***

The bill subjects quasi-public agencies, including quasi-public agencies that provide financing to a constituent unit of higher education, to the state's privatization law by defining them as “state contracting agencies” under the law. Under existing law, state contracting agencies are executive branch agencies, boards,

commissions, departments, offices, institutions, and councils, except for the offices of the state treasurer, comptroller, attorney general, and secretary of the state with respect to their constitutional functions. By law, the definition includes the constituent units of higher education for purposes of the privatization law.

## **§ 5 — CONTRACTS FOR SERVICES THAT ARE CURRENTLY PRIVATIZED**

### ***Business Case***

By law, if a state contracting agency seeks to enter into a contract that privatizes services performed by state employees, it generally must conduct a cost-benefit analysis and submit a business case to SCSB for its approval. The business case must include, among other things, the cost-benefit analysis and 11 other analyses relating to the privatized service, such as its goals, a rationale for them, and options for achieving them (CGS § 4e-16(d)).

For privatization contracts not subject to this requirement (i.e., contracts for services that are currently privatized), state contracting agencies must instead evaluate the contract, using a template prescribed by the Office of Policy and Management (OPM) secretary, to determine if entering into or renewing it is the most cost-effective way of delivering the service. The bill requires agencies to additionally provide a business case for the privatization if the contract is for more than \$1 million. However, it does not subject these business cases to SCSB approval or specify to whom they must be provided.

### ***Cost-Effectiveness Evaluation***

Under the bill, the OPM-prescribed template for the cost-effectiveness evaluation must require the state contracting agency to (1) certify that it has complied with the requirements for the cost-effective analysis and (2) explain why it is not subject to the requirement to produce a business case (see above).

The bill prohibits agencies from entering into the contract whenever the cost-effectiveness evaluation does not demonstrate savings from

privatization, unless they (1) provide the OPM secretary with a written report explaining why they want to enter into the contract despite the lack of savings and (2) receive the secretary's written approval. Unless the contract is a renewal, the agency must also report to the secretary whether the quality of services could be diminished by privatization and any risks associated with terminating or rescinding the contract.

## **§§ 4 & 6 — PRIVATIZATION CONTRACTS GENERALLY**

### ***Notice to Collective Bargaining Agents (§ 6)***

The bill requires state contracting agencies, before entering into or renewing any privatization contract, to provide at least 60 days' written notice to any collective bargaining agent that represents state employees performing work of the type and nature required by the contract. The notice must (1) include all privatization analyses required by existing law and the bill (e.g., the cost-effectiveness evaluation or business case) and (2) offer the bargaining agent a meeting with the agency to discuss the analyses and whether state employees could more appropriately perform the work.

Under existing law, if a privatization contract for a service that is not currently privatized would result in the layoff, transfer, or reassignment of at least 100 state employees, the state contracting agency must, after conducting a cost-benefit analysis and consulting with potentially affected bargaining units, notify the state employees in these bargaining units. The agency must allow the employees an opportunity to reduce the cost of the service, but has sole discretion in determining whether to proceed with the privatization, provided SCSB has approved its business case (CGS § 4e-16(c)(3)).

### ***Plan for Hiring Additional State Employees (§ 6)***

Under existing law, if a business case for a privatization contract is based on evidence that a state contracting agency is not sufficiently staffed to provide a core governmental function, then the agency must include with the business case a plan to remediate the understaffing so that the agency may provide the services directly in the future (CGS § 4e-16(d)).

The bill additionally requires state contracting agencies that (1) seek to enter into any privatization contract that could be done at a lesser cost by state employees and (2) determine that there are not enough employees in the agency to perform the contract, to submit a plan to the OPM secretary to hire more state employees in order to prevent the recurrence of insufficient staffing levels. Presumably, the cost determination is based on the cost-benefit analysis or cost-effectiveness evaluation, as appropriate.

The agencies must submit this plan within 60 days after making the determination. The OPM secretary, as part of any proposed budget or budget adjustment submitted by the governor, must report to the Appropriations and Government Administration and Elections committees on whether and to what extent the agency's plans are included in the proposal, and the basis for this action.

#### ***Attorney General Approval (§ 6)***

The bill prohibits state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval. It requires agencies, as part of their submission to the attorney general, to include the following:

1. a copy of the proposed contract;
2. any certifications required by the bill and the existing privatization law; and
3. a (a) certification that the contract was approved by SCSB or not subject to its approval or (b) copy of an exemption granted by the governor for certain emergency procurements for public health, safety, or welfare purposes.

Under the bill, a privatization contract is not binding on the state if it is entered into on or after July 1, 2018 without (1) the attorney general's approval and (2) compliance with the above submission requirements.

#### ***State Contracting Portal Postings (§ 4)***

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The bill prohibits privatization contracts from being valid unless all certifications required by the bill and existing law are posted (presumably, by the state contracting agency) on the State Contracting Portal at least 30 days before the contract's execution. In addition to the certifications required by the bill, existing law requires agencies to certify, as part of a cost-benefit analysis, that all projected costs, savings, and benefits are valid and achievable (CGS § 4e-16(b)).

## **§ 7 — CONSTITUENT UNITS OF HIGHER EDUCATION**

By law, the state's constituent units of higher education are, generally, not subject to SCSB's authority, except for the privatization law. Current law required SCSB to adopt, by January 1, 2011, regulations to apply the requirements of specified SCSB-related statutes to the constituent units. (To date, the board has not adopted these regulations.)

The bill instead requires (1) the constituent units, by January 1, 2019, to propose regulations to SCSB and (2) SCSB to adopt the regulations with any modifications it deems appropriate. It subjects all constituent unit expenditures, regardless of funding source, to the requirements of the SCSB-related statutes until the board adopts the regulations. For example, it would allow SCSB to hear and decide contests by bidders and proposers of contract solicitations or awards by the constituent units (CGS §§ 4e-36 and 4e-40).

The bill does not (1) specify what the regulations must address beyond maintaining existing law's requirement that they consider factors unique to the constituent units or (2) establish a deadline by which SCSB must adopt them. Additionally, several of the statutes that would apply to the constituent units require SCSB to adopt implementing regulations before they become operative. To date, SCSB has not adopted any of these implementing regulations, therefore, it is unclear how the statutes would apply to the constituent units.

## **§ 8 — SCSB STAFFING**

The bill requires the auditors of public accounts, within 90 days

after the legislature adjourns a regular session sine die, to recommend to OPM an appropriate staffing level for SCSB to fulfill its duties. If the board is staffed at “substantially lower levels” than recommended by the auditors, the auditors may issue a compliance report for each state contracting agency. Existing law requires SCSB to (1) audit contracting agencies' compliance with procurement statutes and regulations every three years and (2) issue a compliance report within 30 days after completing the audit. The bill does not specify what constitutes substantially lower staffing levels.

Under the bill, if SCSB has not issued a compliance report for an agency for three years or more as of December 31 in any year, the auditors must issue the report by the following April 1. Presumably, this means the auditors must also audit the contracting agency before issuing the report.

The bill also requires state contracting agencies, if SCSB remains below the auditors' recommended staffing level, to designate liaisons to SCSB. The liaison must notify the board of any privatization contract of more than \$50,000 and provide the board with any evaluations or analysis of the contract within 10 days after the agency completes the evaluation or analysis. Under the bill, sufficient notice includes directing SCSB staff members to postings on the State Contracting Portal. Agencies must notify the liaison that such reporting is an essential part of his or her duties.

## **BACKGROUND**

### ***Related Bill***

sSB 436, favorably reported by the Human Services Committee, creates a public-private partnership advisory council and exempts contracts the council recommends from requirements for privatizing state services.

## **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 9      Nay 8      (03/23/2018)